

OPINION NO. 814

Syllabus:

1. A board of township trustees has authority to grant reasonable sick leave with pay to part-time township employees.
2. A township having two full-time constables is not required to establish a constable's relief and pension fund, or any similar type fund.

To: George C. Steinemann, Erie County Pros. Atty., Sandusky, Ohio
By: William B. Saxbe, Attorney General, January 21, 1964

I have before me your request for my opinion reading as follows:

"Section 143.29, Revised Code of Ohio, provides sick pay for full and part-time employees of the agencies named therein. Township employees are not mentioned. However, in Opinion No. 1035, Opinions of Attorney General for 1951, page 882, it was held... 'In the absence of a statute expressly granting sick leave for a definite period to township employees, township trustees may grant their full-time employees reasonable sick leave with pay.' (Emphasis ours.)

"Opinion No. 604 of Attorney General's Opinions for 1957, page 184, states... 'It has been the view of this office (Attorney General) that the policy of the state favors a rather liberal

application of the laws relating to allowances of vacation and sick leave.'

"An opinion is requested as to whether or not, in the absence of such statute granting sick leave, part-time employees of a township could be granted sick leave with pay.

"Your opinion is further requested as to whether, in a situation where there are two or more full-time constables, there is any mandatory duty of the trustees to cover such employees by way of a policemen's retirement, indemnity or police dependent fund; secondly, in a situation where the township has a firemen's indemnity protection, whether any constables employed by the township automatically become participants in such coverage."

The second syllabus of Opinion No. 1035, Opinions of the Attorney General for 1951, page 882, states:

"2. In the absence of a statute expressly granting sick leave for a definite period to township employes, township trustees may grant their full-time employes reasonable sick leave with pay."

After citing the foregoing syllabus with approval in Opinion No. 6033, Opinions of the Attorney General for 1955, at page 671, the then Attorney General stated:

"It will be noted that references are made in several of the opinions aforesaid to 'full-time' employees. I do not consider that the principles brought out in those opinions need be limited to full-time employees. Apparently they were so limited only because in each instance the language of the question presented was so limited."

The rationale of the cited opinions is that public policy favors reasonable employee sick-leave with pay, and that the authority to hire carries with it the implied power to set the terms of employment, one of which may be reasonable sick-leave. I can find no fault with this reasoning and conclude, as was concluded in the 1955 Opinion, that it is applicable to part-time as well as full-time township employees.

You have asked further whether township trustees are required to establish "a policemen's retirement, indemnity or police dependent fund" to cover two or more full-time township constables and whether, in the absence of a firemen's relief and pension fund, constables become participants in the firemen's indemnity fund.

Township firemen's relief and pension funds are established pursuant to Section 521.01 to 521.13, inclusive, Revised Code. Section 521.02, Revised Code, provides in material part:

"Each township having a fire department

supported in whole or in part at public expense, and employing two or more full-time regular firemen, shall establish and maintain a township firemen's relief and pension fund.

"* * * * *"

There is no statutory authority for the establishment of a township policemen's relief and pension fund. In comparison Chapter 741, Revised Code, provides for the establishment of both a firemen's relief and pension fund and a policemen's relief and pension fund in municipal corporations. Accordingly, I can only conclude that the failure to enact legislation to establish a township policemen's relief and pension fund was intentional and that, in the absence of such legislation, a board of township trustees is not required to establish a relief and pension fund for township constables.

Sections 521.14 to 521.21, Revised Code, which provided for the establishment of a firemen's indemnity fund were repealed effective September 16, 1957. In their stead, apparently Chapter 146, Revised Code, was enacted (129 Ohio Laws 613) effective January 10, 1961 (originally enacted as Chapter 3310, Revised Code, effective September 16, 1957) to establish a volunteer firemen's dependents fund. There is no authority either directly or by implication for participation by township constables in the fund established for volunteer firemen under Chapter 146, Revised Code.

In specific answer to your question, therefore, it is my opinion that:

1. A board of township trustees has authority to grant reasonable sick leave with pay to part-time township employees.
2. A township having two full-time constables is not required to establish a constable's relief and pension fund, or any similar type fund.